

58.

D/LS

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DIRECTV, INC.,

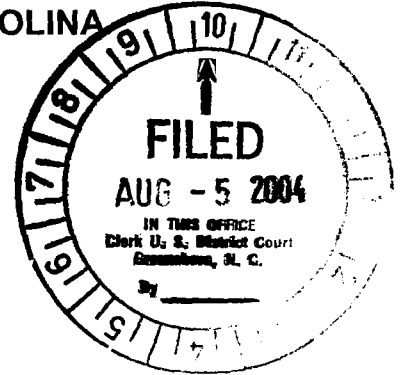
Plaintiff,

v.

RICHARD BASS, EMMA
BROADNAX, CHARLES E.
BRUMFIELD, RAYFORD CAUBLE,
DONNIE CURRY, CLARENCE
LAUGHLIN, JONATHAN
MCCRAVEY, JERRY POE, and
ARNOLD PUGH,

Defendants.

1:03CV00448



ORDER AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This matter was referred to the undersigned on motions to dismiss filed by Defendants Donnie Curry, Arnold Pugh, and Clarence Laughlin (docket nos. 6, 24, and 26). Also pending before the court is Plaintiff's motion for leave to amend the complaint to dismiss its claim arising under 18 U.S.C. § 2512 and to add three state law claims (docket no. 56).

Plaintiff DIRECTV, Inc. ("DIRECTV") is an electronic communications company that provides satellite television programming to subscribers. DIRECTV brought this action alleging that Defendants purchased and used illegal pirate access devices to gain unauthorized access to DIRECTV's scrambled television

programming. DIRECTV has brought many such cases in this district.

Plaintiff has set forth a number of causes of action in its complaint, and Defendants now test several of these claims by means of a Rule 12(b)(6) motion to dismiss for failure to state a claim. Specifically, Defendants move to dismiss Counts 2, 3, and 5 of the complaint. This court has entertained a large number of similar motions to dismiss in other cases brought by DIRECTV, and judges of this court have filed numerous Recommendations and Orders addressing these motions to dismiss. Because all of the legal issues raised by the motions to dismiss have been recently and persuasively dealt with by the judges of this court, the undersigned will not extensively address once again issues that have already been determined by the court. Rather, the court will, in part, adopt by reference other decisions within this court that resolve the motions to dismiss filed by Defendants.

Accordingly, **IT IS RECOMMENDED** that:

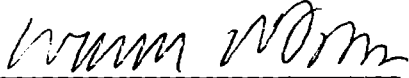
1. The motion to dismiss Count 2, brought pursuant to 18 U.S.C. § 2511 be denied for the reasons stated by the court in *DIRECTV v. Ingram*, 1:03CV00455 (M.D.N.C. Feb. 2, 2004, Recommendation), *adopted*, Apr. 27, 2004.

2. The motion to dismiss Count 3, brought pursuant to 18 U.S.C. § 2512 be granted for the reasons stated by the court in *Ingram*, *supra*.

3. The motion to dismiss Count 5, alleging conversion under North Carolina state law be granted for the reasons stated in *Ingram*, *supra*.

As for Plaintiff's motion to amend the complaint to drop its § 2512 claim and

to add three state law claims, Defendants have not opposed the motion, and the time to do so has expired. For this reason, the motion to amend is granted. I note that, in any event, the § 2512 claim will be dismissed if the court adopts this recommendation.



WALLACE W. DIXON
United States Magistrate Judge

Durham, NC
Aug. 5, 2004